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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/955,526	09/12/2001	John C. Reed	P-LJ 4868	8589	
23601 7:	590 06/02/2003				
CAMPBELL & FLORES LLP 4370 LA JOLLA VILLAGE DRIVE 7TH FLOOR SAN DIEGO, CA 92122			EXAMINER		
			COLLINS, C	COLLINS, CYNTHIA E	
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			1638	9	
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Ogrifice Action Summary	<u> </u>		Application No.	Applicant(s)				
## Examiner Cynthia Collins 1538 ## The MAILING DATE of this communication appears on the cover sheet with the correspondence address → Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. ■ Educations of time anny to available under the provisions of 37 CFR 1.138(a), in no event, however, may a reply be timely filled the provisions of 37 CFR 1.138(b), in no event, however, may a reply be timely filled in the provisions of 37 CFR 1.138(b), in no event, however, may a reply be timely filled the provisions of 37 CFR 1.138(b), in no event, however, may a reply be timely filled in the provisions of 37 CFR 1.138(b), in no event, however, may a reply be timely filled the provisions of the communication of their (30) days will be considered simely in the provisions of the provisions of the communication of their (30) days will be considered exhaults of the provisions of the provisions of the communication of their (30) days will be considered exhaults of the provisions of the provisions of the communication of their (30) days will be considered exhaults of the provisions of the provision of the provi	-							
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1) Responsive to communication(s) filed on 10 March 2003. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 22-46 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) 22-46 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved by liapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1 Certified copies of the priority documents have been received. 2 Certified copies of the priority documents have been received in Application No 3 Copies of the certified copies of the priority documents have been received. 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) The translation of the foreign language provisional application has been received. 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 120 and/or 121. Attachment(s) Interview Summary (PTO-413) Paper No(s) 9) Notice of Informal Patent Application (PTO-152)	THE N - Exten after S - If the - If NO - Failur - Any re earne	MAILING DATE OF THIS COMMUNICATION. sions of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a reply period for reply is specified above, the maximum statutory period we to reply within the set or extended period for reply will, by statute, eply received by the Office later than three months after the mailing	86(a). In no event, however, may a reply be to within the statutory minimum of thirty (30) da rill apply and will expire SIX (6) MONTHS from cause the application to become ABANDON	imely filed sys will be considered timely. In the mailing date of this communication. ED (35 U.S.C. § 133).				
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Application/Control Number: 09/955,526

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DETAILED ACTION

This Office Action is in response to the Response filed March 10, 2003.

This Office action contains a new requirement for Election/Restriction, therefore the previous requirement mailed February 10, 2003 is withdrawn. The Office apologizes for any inconvenience to Applicant.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 22-28, drawn to an isolated nucleic acid molecule corresponding to SEQ ID NO:3 or encoding SEQ ID NO:4, classified in class 536, subclass 23.6, for example.
- II. Claims 29-43, drawn to a non-naturally occurring plant that ectopically expresses a nucleic acid molecule encoding a BI-1 polypeptide corresponding to SEQ ID NO:4, and to a method of increasing the resistance of a plant to biotic or abiotic stress by ectopically expressing a nucleic acid molecule encoding a BI-1 polypeptide, classified in class 800, subclass 298, for example.
- III. Claims 44-46, drawn to an isolated polypeptide corresponding to SEQ ID NO:4, classified in class 530, subclass 370, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different

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functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation and different functions. The isolated polypeptide of Invention III is structurally and functionally distinct from the isolated nucleic acid molecule of Invention I.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the isolated nucleic acid molecule of Invention I can be used in a materially different process of using that product, such as a hybridization method.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, their recognized divergent subject matter, and the requirement for different areas of search, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Remarks

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (703) 605-1210. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (703) 306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

CC May 21, 2003

DAVID T. FOX
PRIMARY EXAMINER

GROUP 1807

Decerd